

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

TIMOTHY LEWIS-EL,

Plaintiff,

Case No. 11-CV-14472

vs.

HON. MARK A. GOLDSMITH

B. PARKER, et al.,

Defendants.

**ORDER**

**ACCEPTING AND ADOPTING THE RECOMMENDATION CONTAINED IN THE  
MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION DATED AUGUST  
16, 2013 (DKT. 46); (2) GRANTING DEFENDANT BURTACH'S MOTION TO  
DISMISS (DKT. 22) AND DEFENDANT DURNAN'S MOTION TO DISMISS (DKT.  
41); (3) DISMISSING THE COMPLAINT WITH PREJUDICE AGAINST  
DEFENDANTS BURTACH AND DURNAN; and (4) ORDERING PLAINTIFF TO  
SHOW CAUSE**

This matter is presently before the Court on the Report and Recommendation (R&R) of Magistrate Judge R. Steven Whalen, issued on August 16, 2013 (Dkt. 46). In the R&R, the Magistrate Judge recommends that Defendant Burtach's Motion to Dismiss (Dkt. 22) and Defendant Durnan's Motion to Dismiss (Dkt. 41) both be granted and that the complaint be dismissed with prejudice against these two Defendants.

The parties have not filed objections to the R&R, and the time to do so has expired. See Fed. R. Civ. P. 72(b)(2). The Court has reviewed the R&R and concludes that the Magistrate Judge has reached the proper conclusion for the proper reasons. Therefore, the R&R is accepted and adopted as the findings and conclusions of the Court. Accordingly, Defendant Burtach's Motion to Dismiss (Dkt. 22) and Defendant Durnan's Motion to Dismiss (Dkt. 41) are both granted. Plaintiff's complaint is dismissed with prejudice against these two Defendants.

In addition, the Court notes that it appears that the sole remaining Defendant, B. Parker, has not yet been served. Although Magistrate Judge Whalen ordered that service be

effectuated by certified mail, return receipt requested, Dkt. 34, the docket reflects that this mailing went unclaimed and was returned on June 12, 2013. Pursuant to Michigan Court Rule 2.105(A)(2), service is not effective by certified mail until defendant “acknowledges receipt of the mail.” Plaintiff has not requested any other alternative means of service, such as by publication or posting. See Michigan Court Rule. 2.105(I), 2.106. Moreover, although Magistrate Judge Whalen extended the time for service by 45 days in April 2013, Dkt. 34, that time for service has now expired and Plaintiff has not requested a further extension. See Fed. R. Civ. P. 4(m). Therefore, the Court orders Plaintiff to show cause in writing why this matter should not be dismissed without prejudice for failing to request an extension or seek alternative means of service. Plaintiff’s response must be received by the Court on or before October 18, 2013.

SO ORDERED.

Dated: September 18, 2013  
Flint, Michigan

s/Mark A. Goldsmith  
MARK A. GOLDSMITH  
United States District Judge

**CERTIFICATE OF SERVICE**

The undersigned certifies that the foregoing document was served upon counsel of record and any unrepresented parties via the Court's ECF System to their respective email or First Class U.S. mail addresses disclosed on the Notice of Electronic Filing on September 18, 2013.

s/Deborah J. Goltz  
DEBORAH J. GOLTZ  
Case Manager